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December 12, 2003

VIA ELECTRONIC MAIL SERVICE AND FIRST-CLASS MAIL SERVICE

The Honorable Bruce Duke
Deputy Executive Director
South Carolina
Public Service Commission
Post Office Drawer 11649
Columbia, South Carolina 29211

RE: Application of BellSouth Telecommunications, Inc. To Provide In-Region InterLATA Services Pursuant to Section 271 of the Telecommunications Act of 1996, **Docket No. 2001-209-C, Our File No. 611-10116**

Dear Mr. Duke:

Enclosed is the original and fifteen (15) copies of the **Response of AT&T Communications of the Southern States, LLC, MCI WorldCom Communications, Inc., MCI WorldCom Network Services, Inc. and MCIMetro Access Transmission Services, LLC to BellSouth's Reply** for filing in the above-referenced docket. By copy of this letter, I am serving all parties of record and enclose my certificate of service to that effect.

If you have any questions or need additional information, please do not hesitate to contact me.

With kind regards, I am

Very truly yours,



John J. Pringle, Jr.

JJP/cr

cc: All parties of record
Martha M. Ross-Bain, Esquire

Enclosure

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S. C. PUBLIC SERVICE COMMISSION

DOCKET NO. 2001-209-C

STATES.
DCOM

AT&T Communications of the Southern States, LLC (“AT&T”), MCI WorldCom Communications, Inc. (“MW Communications”), MCI WorldCom Network Services, Inc. (“MW Network Services”), and MCIMetro Access Transmission Services, LLC (“MCIIm”) are obliged to file this Response to BellSouth’s Reply in order to bring to the Commission’s attention how BellSouth’s Motion has been received in certain other states in the BellSouth region, and to respond to BellSouth’s representation that “BellSouth has no obligation to offer line sharing pursuant to Section 271.” Reply at p. 6, ¶ 12.

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BellSouth bases its argument that BellSouth has no obligation to offer line sharing pursuant to Section 271 on two assertions: 1) line sharing (the High Frequency Portion of the Loop or “HFPL”) is not a Section 271 check list #4 item (271(c)(2)(B)(iv)); and 2) that it would be “illogical” for the FCC to lift the obligation for an ILEC to provide access to line sharing as an unbundled network element (“UNE”) only to reinstate that obligation under section 271. Both of BellSouth’s assertions are incorrect.

I. Line Sharing is a Checklist Number Four Item.

BellSouth argues that that line sharing is not a “loop transmission” under checklist item number 4. Reply at p. 7. However, the FCC and BellSouth itself have repeatedly categorized line sharing under checklist number 4. In every FCC 271 Order granting BellSouth long distance authority, the FCC placed line sharing and line splitting in the section of the Order considering checklist item #4.¹ More importantly, BellSouth placed line sharing and line splitting in every one of its own briefs to the states and to the FCC under checklist item #4.² Having briefed line sharing as a checklist number 4 item, it is a

¹ See e.g., Memorandum Opinion and Order, In the Matter of: Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina and South Carolina, WC Docket No. 02-150, FCC Order 02-260, released September 18, 2002, pp. 142-45 (finding that under checklist item #4, “BellSouth offers nondiscriminatory access to the high frequency portion of the loop in each applicable state.”)

² *Brief in Support of Application by Bellsouth for Provision of In-Region, Interlata Services in Florida and Tennessee*, In the Matter of: Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Florida and Tennessee, WC 02-307, filed September 20, 2002 at pp. 96-99; *Brief in Support of Application by Bellsouth for Provision of In-Region, Interlata Services in Alabama, Kentucky, Mississippi, North Carolina and South Carolina*, In the Matter of: Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina and South Carolina, WC 02-150, filed June 20, 2002 at pp. 114-116;

bit disingenuous for BellSouth to now assert that line sharing is *not* a check list #4 item. BellSouth cannot admit this, of course, because to do so would admit that BellSouth continues to have an obligation to provide access to line sharing under section 271. *TRO ¶¶ 653-55*. Instead, BellSouth spends several paragraphs arguing that because loops and line sharing are separate UNEs under 251, therefore they cannot both fall under “local loop transmission facilities” in checklist item #4. Reply at pp. 7-8. As previously stated in the CLEC’s response to BellSouth’s Motion to Modify the IPP, the HFPL is clearly a form of loop transmission – a loop transmission that the Bells themselves routinely use to provide xDSL services separately from narrowband voice services.³ Indeed, in describing the high frequency portion of the loop in the *Line Sharing Order*, the FCC stated that “requesting carriers may access unbundled loop functionalities, such as *non-voiceband transmission frequencies, separate from other loop functions*” – distinguishing the high frequency loop transmission path from the narrowband frequencies used for circuit switched voice services.⁴ The HFPL (line sharing) is repeatedly categorized under checklist item #4 by both BellSouth and the FCC *because* the HFPL is a “local loop transmission facility” under 271(c)(2)(B)(iv). Accordingly, as long as BellSouth continues to offer long distance, it must provide access to line sharing. Because, in

Brief in Support of Application by Bellsouth for Provision of In-Region, Interlata Services in Georgia and Louisiana, In the Matter of: Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Georgia and Louisiana, CC 01-277, filed October 2, 2001 at pp. 112-114.

³ In other words, Bell customers typically purchase narrowband voice services without also purchasing xDSL, and pay a separate monthly fee in order to add xDSL services to their local loop.

⁴ See *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Third Report and Order in CC Docket No. 98-147 Fourth Report and Order in CC Docket No. 96-98, FCC 99-355, 14 FCC Rcd. 20912, 20923 at para. 18 (1999).

BellSouth's own words, "the purpose of SEEM is to prevent any 'backsliding' by BellSouth after it enters the long distance market",⁵ BellSouth's Motion to Modify the IPP to remove line sharing should be denied.

⁵ BellSouth Telecommunications, Inc. Post-Hearing Brief in Support of its Application for InterLATA Relief Pursuant to Section 271 of the Communications Act of 1934, As Amended, SCPSC Docket No. 2001-209-C, filed October 22, 2001, p. 32.

II. BellSouth's Obligation to Provide Non-Discriminatory Access to Line Sharing Under Section 271 is Independent of its Obligation to Provide Access Under Section 251.

In lieu of actual legal argument, BellSouth asserts that it is “illogical” for the FCC to lift the obligation of ILECs to provide access to line sharing as a UNE only to maintain an RBOC’s obligation to maintain access under section 271. Reply at Page 9, ¶ 17.

Despite BellSouth’s reasoning, however, the FCC expressly held that “BOC obligations under section 271 are not necessarily relieved based on any determination we make under section 251 unbundling analysis.” *TRO* ¶ 655. Moreover, the FCC expressly addressed the question of the apparent illogic of a statutory scheme in which the FCC could cease the requirement of an RBOC to provide access to a UNE under 251, and yet continue the identical requirement under section 271:

659. In interpreting section 271(c)(2)(B), we are guided by the familiar rule of statutory construction that, where possible, provisions of a statute should be read so as not to create a conflict. So if, for example, pursuant to section 251, competitive entrants are found not to be “impaired” without access to unbundled switching at TELRIC rates, the question becomes whether BOCs are required to provide unbundled switching at TELRIC rates pursuant to section 271 (c)(2)(B)(vi). In order to read the provisions so as not to create a conflict, we conclude that section 271 requires BOCs to provide unbundled access to elements not required to be unbundled under section 251, but does not require TELRIC pricing. This interpretation allows us to reconcile the interrelated terms of the Act so that one provision (section 271) does not gratuitously reimpose the very same requirements that another provision (section 251) has eliminated.
TRO ¶ 659.

In short, although the price for a “de-listed” UNE may change, if that UNE falls under 271 (c)(2)(B)(iii)-(vi), the obligation to provide non-discriminatory access remains. BOCs who continue to sell long distance must continue to provide non-discriminatory

access to all checklist items “de-listed under 251”⁶, including line sharing under checklist item #4. Whether BellSouth thinks that statutory scheme is illogical or not, it is the law.

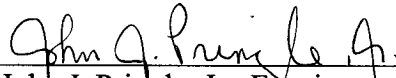
⁶ With the exception of checklist item numbers 1 and 2, as these items are directly tied to section 251 UNEs.

III. BellSouth's Motion to Modify the IPP Must be Denied.

As a consequence of the foregoing, there is no legitimate debate about whether line sharing should be categorized under checklist number 4 – the FCC and BellSouth have categorized line sharing as such in every pleading on the subject. There is also no legitimate debate about whether RBOCs, including BellSouth, must continue to provide non-discriminatory access to checklist #4 items, including the HFPL (line sharing). TRO ¶¶ 653-667. Manifestly then, BellSouth remains obligated to provide non-discriminatory access to line sharing under both the TRO and section 271. *Id.*; TRO ¶¶ 264-71. That obligation should be enforced, as it always was intended to be, by the IPP. The Commission should, therefore, reject BellSouth's obfuscatory tactics and deny its Motion to Modify the IPP.

Respectfully submitted this the 12th day of December, 2003.

AT&T Communications of the Southern States, LLC



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